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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,887	09/06/2005	Brian Leslie Smalley	R031 1160.1	4424
26158 7590 02/13/2008 WOMBLE CARLYLE SANDRIDGE & RICE, PLLC ATTN: PATENT DOCKETING 32ND FLOOR P.O. BOX 7037 ATLANTA, GA 30357-0037				
EXAMINER				
COLLINS, MICHAEL				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,887

Applicant(s)

SMALLEY ET AL.

Examiner

MICHAEL K. COLLINS

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/09/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9, 11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9, 11 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date 11/12/2007.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 6 and 19 recites the limitation "the at least one flexible portion" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-6, 9, 11, and 13-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schauer (USP 3,300,115).

Regarding claim 1, Schauer discloses a paperboard carton (4) for articles arranged in an end-on-end relationship in at least two layers, the carton comprising:

- six sides, the six sides including a first side (18) disposed between a second side and a third side, the first side being perpendicular a fourth side, the second side, and the third side, the second side and the third side being parallel, and a divider pad (26) provided between the adjacent end-on-end layers of articles (see Figures 1 and 6)
- a removable portion (76) that defines an opening in the first side for article removal
- the first side including a stop wall (72,72a), the stop wall including a hinged flap defined at least partially by two cuts extending to respective cut ends that are intersected by respective transverse lines (80) that prevent the cuts from extending beyond their intended length (see Figures 1-3).

Regarding claim 2, Schauer discloses the carton of claim 1 wherein the divider pad is secured to the inside of the carton.

Regarding claim 3, Schauer discloses the carton of claim 1 wherein the removable portion extends into both the second and the third sides (see Figure 1).

Regarding claim 4, Schauer discloses the carton of claim 1 wherein the divider pad has a fold down gluing panel (see Figure 4).

Regarding claim 5, Schauer discloses 5. (Currently Amended) The carton of claim 1 wherein when the opening is created, all of the containers in the carton are prevented from rolling out (see Figure 3).

Regarding claim 6, Schauer discloses the carton of claim 1 wherein the at least one flexible portion includes two aligned cuts, and the at least one flexible portion is pivoted between the two cuts.

Regarding claim 9, Schauer discloses the carton of claim 1 wherein the six sides are substantially rectangular (see Figure 6).

Regarding claim 11, Schauer discloses the carton of claim 1 wherein the two cuts extend along the folds between the first side and the second side and between the first side and the third.

Regarding claim 13, Schauer discloses a blank capable of being formed into a paperboard carton for articles arranged in an end-on-end relationship in at least two layers, the blank having six sides, the six sides including a first side (18) disposed between a second side and a third side, the first side being perpendicular a fourth side, the second side, and the third side, the second side and the third side being parallel, and a divider pad (26) provided between the adjacent end-on-end layers of articles, a removable portion (76) that defines an opening in the first side for article removal, the first side including a stop wall (72,72a), the stop wall including a hinged flap defined at least partially by two cuts extending to respective cut ends that are intersected by respective transverse lines (80) that prevent the cuts from extending beyond their intended length (see Figures 1-3).

Regarding claim 14, Schauer discloses the blank of claim 13 wherein the divider pad is secured to the inside of the carton (see Figure 4).

Regarding claim 15, Schauer discloses the blank of claim 13 wherein the removable portion extends into both the second and the third sides (see Figure 1).

Regarding claim 16, Schauer discloses the blank of claim 13 wherein the divider pad has a fold down gluing panel.

Regarding claim 17, Schauer discloses the blank of claim 13 wherein when the opening is created, all of the containers in the carton are prevented from rolling out (see Figure 3).

Regarding claim 18, Schauer discloses the blank of claim 13 wherein the six sides are substantially rectangular (see Figure 6).

Regarding claim 19, Schauer discloses the blank of claim 13 wherein the at least one flexible portion includes two aligned cuts, and the at least one flexible portion is pivoted between the two cuts.

Regarding claim 20, Schauer discloses the blank of claim 13 wherein the two cuts extend along the folds between the first side and the second side and between the first side and the third side

Response to Arguments

7. Applicant's arguments with respect to claims 1-6, 9, 11, and 13-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL K. COLLINS** whose telephone number is (571)272-8970. The examiner can normally be reached on 8:30 am - 5:00 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3651

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.K.C.
2/10/2008

/Gene Crawford/
Supervisory Patent Examiner, Art
Unit 3651